

THE
DEGREES
O F
Confanguinity
A N D
AFFINITY.

Described, and Delineated.

B Y
ROBERT DIXON, D. D.

L O N D O N,
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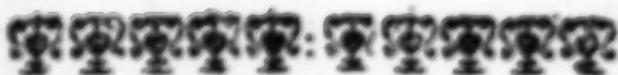
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O F
Consanguinity,
O R,
Of Kindred by Blood.

LEVIT. XVIII. VI.

*None of you shall approach to any
that is near of Kin to him, &c.*

THE Septuagint render it,
Ἄνθετος ἀνθεπτος πρὸς
πάσιν εἰδῶν σαρκός αἵτοι καὶ
προσιλλέσται, &c. Or, πρὸς
οὐδαίν σαρκός. The Latine. *Vir, Vir
non accedit ad Propinquitatem car-
nis sue.* i. To her that is so near
of kin, as that they dwell in the
same House; as Parents, Children,
Brothers and Sisters; or the Pa-

Of Consanguinity.

rents Brothers and Sisters, or Uncles and Aunts.

Nearness of flesh above me, is my Mother; below me, is my Daughter; on my side, is my Sister.

These may not be approached, for their own sakes, being Immediate Relations, and all else that **Lev. 21.2.** are forbidden, are forbidden for the sakes of these.

And that this is properly nearness of kin, or flesh, may appear by the Prohibition to the High-Priest, that he may not be defiled for the Dead among his people, but for his Kin, that is near unto him he may; For his Mother and Father, for his Son and Daughter, for his Brother and [Virgin] Sister.

So that Nearness of Flesh, is
Mother.

I: *She out of whose Flesh I am born.*

2. *She*

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2. *She that is Born out of my Daughter Flesh.*
3. *She that is immediately Born Sister of the same Flesh that I am Born of.*

Now to keep men from this Nearness, God hath set this Bar or *ρεστυλχα*, of Uncles and Aunts, whose Marriages are therefore forbidden to keep men farther off, from Father and Mother, Son and Daughter, and because they are *Quasi Parentes, & Loco Parentum*. So have some men, not God, made a Bar of *Cosin Germans*, to keep men off from Brother and Sister.

So the Jews were forbidden to make an Image, as a Bar to keep them from Idolatry.

In the *Levitical Law* therefore are forbidden these Nearnesses.

Of Consanguinity.

1. In the Ascending Line, Fathers and their Children, and their Allies.
2. In the Equal Side-Line, Brothers and Sisters, and their Allies.
3. In the Unequal Side-Line, Uncles and Aunts, and their Allies.

No Cousin Germans at all.

By the Civil Law the same Nearnesses are forbidden, and no farther; excepting as *Ulpian* in his Rules observes, thus: *In Quarto [Gradu] permittitur [Coniugium] extra eos Personas quæ Parentum Leberorumque locum habent.* Therefore says he, The Great Aunt by the Fathers side, and the Sisters Niece may not Marry, *namvis quartus gradus sunt*, because the Prohibition is not always for the nearest.

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Nearness, or for the Degree, but for the proper Reason aforesaid, of being *Vivi Parentes*, or *Quasi Parentes*. Ther fore supposing a Woman to Live to see Six Degrees of her Line, yet it is unlawful for her to Marry that Sixth Degree of her Nephews.

In Cosins in the Equal Side-Lines, the farther off the less reason they should be forbidden, but in Uncles and Aunts in the Descending unequal Side-Lines, the farther off the greater reason they should be forbidden.

Therefore there is no comparison between the Cognition of Uncles and Aunts, and their Nephews or Necces, in the unequal Descending Side-Lines, and the Cognition of Cosins in the Equal Side Lines.

It is true, *In pari Cognitionis gradu, par idemque jus Statnatur:*

Of Consanguinity.

That is when the Cognition is the same, the Law is the same too, meaning if it be measured in the same kind of Cognition, Ascending compired to Ascending ; Equal Collateral, to Equal Collateral ; Unequal to Unequal ; for when the Comparison is of things in the same order, then not only the Degree, but the reason for the most part is the same too.

**2. Levitical Law.
Of Cosin Germans.**

The Case of Cosin Germans is no ways reached at as to a Prohibition in the *Levitical Law*, because there is no Degree equally near unto it that is forbidden, except (as before) of such Persons as are as it were Parents, or in the place of Parents.

Instances. There are Instances of the Marriage of Cosin Germans in Scripture, as *Jacob Married his Cosin German Rachel, the Daughter of his Uncle Laban. Zelophebads Daughter.*

Daughters Married their Fathers Brothers Sons. The Virgin *Mary* Num. 3.6. was Married to her Cousin German *Joseph*, who was the Legal Son of *Heli*, but the Natural Son ^{Lu.c. 3.23.} of *Jacob*. Now *Heli* and *Jacob* ^{Math. 1.} were Brethren the Sons of *Matthan*, who was Grand-Father to *Joseph* and *Mary*.

The Christian Law or the Gospel, no where forbids these Marriages.

^{2. The Christian Law.}

Christ saith, *A man shall leave his Father and Mother, and cleave to his Wife, and they two shall be one flesh.*

By Father and Mother, are forbidden the Marriage of Parents and Children.

By cleaving to his Wife, are forbidden Adultery, with another mans Wife, and Extraup-tial Pollutions, and *Concubitus masculorum*.

By

Of Consanguinity.

By they Two shall be one Flesh, is forbidden Polygamy, and the mixture of several Species of Flesh, as Bestiality, &c.

3. Publick
Honesty
and good
Report.

As for Publick Honesty and Good Report which is required in all things, especially in Marriages there is nothing contrary to these in the Marriage of Cosin Germans; I do not mean false Love, or weak Fancies and Estimations of Vulgar People, concerning publick Fame or Honesty. But I hold that the Laws of God and of Men, and the universal Judgments of the most Civil part of Mankind, are the measures of publick Honesty.

Instances,
Liv. Av.
L. II.

In the Oration of *sp. Ligustinus in Livy*, he saith, *Pater mibi uxorem dedit fratri sui filiam*. Cicero pro Cluentio sayes, That his Sister Married *Melinus*, her Cosin German: *Augustus Caesar* gave his Daugh-

Daughter *Julia*, to *Marcellus* the Son of his Sister *Olavia*. The brave *Brutus* was married to *Portia* the Daughter of his wife Uncle *Cato*. *Marcus Antonius* the Philosopher was married to his Cousin German *Annia Faustina*. *Constantius* the Emperor, gave his Sister to her Cousin *Julianus v.l. i. §.* *Duorum Just. de Nuptiis.* & *L. 3. l.* *Non solum §. 1. F. 1. de Ritu Nuptiarum F. L. si Nepot. 3. de Ritu Nuptiarum. L. Conditioni 2. C. de Justit. & Sulst.*

Theodosius (being over-ruled by *S. Ambroise*) was the first that forbad these Marriages. *Tantum pudori tribens continentiae, ut consobrinarum nuptias vetuerit tanquam Sotorum.*

This was abrogated by *Arcadius* & *Honorius* his Son. *v. Justin. l. Celebrandis C. de Nuptiis. Revocata prisci Juris Authoritate, restin- disq;*

Obj.

AUT. Vt.

Ctor.

SOL.

Hisq; calumniarum fomentis Matrimonium inter Consobrinos habeatur.

Obj. In the *Theodosian Code*, the Law seems to say otherwise, in the Titles. *Si Nuptiae ex Rescripto petitantur, & T. de Incestis Nuptiis.*

Sol. Alaric King of the Goths, commanded *Arrianus* to make a Breviary of the *Code*, and corrupted this Law, fitting it to the customs of his own Countrey: So did he in the Epitome of *Caius* his Institutions. So did *Theophilus*, till *Cartius* his Latine Interpreter needed him.

4. The Canon Law. As for the Canon Law, that doth now forbid it, of old it was not so. In the Canons of the Apostles are these Instances, He that Marries two Sisters, or his Brothers Widow or Daughter, may not be received into Holy Orders, and no more: But about St.

St. Austin's time: *Nondum prohibuerat Lex humana, Divina nunquam.* In the Synod of Paris, almost Six Hundred Years after Christ, these are called unlawful Marriages, *Quæ contra Præceptum Domini contrabuntur*, none else. In the old Canons all the prohibited Instances are in this Table.

*Nata, Soror, Neptis, Materteria
Fratri & Uxor.*

Et Patris Coniux, Mater, Privigna, Noverca. C. Extr.
de Best. Sponsi

*Uxorisq; Soror, Privigni Nata,
Nuruſq;*

*Atq; Soror Patris conjungi Lege
vetantur.*

But about this time were sad Assemblies of Bishops: because the Nations were corrupted with the *Goths* and *Vandals*, and they were willing to comply with the Conquerors, they thought fit to prevent

Of Consanguinity.

prevent Incestuous Marriages of Brother and Sister, to make this Barr a προτυπή of forbiding Cousin Germans to Marry.

Their Prohibitions of Popes began with the first Degree of Cousins called Germans, then to the Second, Third and Fourth Degrees of Cousins so often removed, then to Seven, then to Six and Four again, as in the Synod at Caballian. Sometimes *usq; dum generatio agnoscitur, aut memoria retinetur.* Their Reasons are bald enough ; because but 4 Humours in the Body, but 4 Elements of the World, but 4 Fingers and a Thumb on a Mans Hand, The Thumb is the Stirps or Common Pajent, and the Life of Man is but a Span long, but 4 Quarters of the World.

For 4 Degrees.

Because there are but 3 Faculties of the Soul ; which being joyned

For 7 Degrees.

to the 4 Humours of the
Book 7: And therefore we
ascend to the Seventh Ge-
degree, i. to Cousins Seven
removed. These were their
y Reasons against all Man-
o prohibite these Marriages.
more let us not forget, as the
doubt of all: Because, by
Civil Law, Inheritances des-
but to the 7th. Degree: A
round; because Inheritan-
scend unto the 10th. Degree.
f not, they reckon their
ees otherwise than the Ci-
aw doth, and consequently
Marriages of Cousins to
Degree Exclusively; be-
Cousin Germans by them
reckoned but in the 2^d. De-
Whereas by the Civil Law
they are in the 4th. Degree:
by that Law there are so ma-
grees as there are Persons
beside

prevent Incestuous Marriages
Brother and Sister, to make
Barr a ~~negocium~~ of forbidding
Germans to Marry.

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For 4 Degrees. are bald enough ; because
4 Humours in the Body, 4
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of Man is but a Span long,
Quarters of the World.

For 7 Degrees. Because there are but 3
ties of the Soul ; which ~~joy~~
joy

joyned to the 4 Humours of the Body make 7: And therefore we must abstain to the Seventh Generations, i. to Cousins Seven times removed. These were their mighty Reasons against all Mankind to prohibite these Marriages. One more let us not forget, as the most doubty of all: Because, by the Civil Law, Inheritances descend but to the 7th. Degree: A false Ground; because Inheritances descend unto the 10th Degree. But if not, they reckon their Degrees otherwise than the Civil Law doth, and consequently forbid Marriages of Cousins to the 5th. Degree Exclusively; because Cousin Germans by them are reckoned but in the 2^d. Degree: Whereas by the Civil Law they are in the 4th. Degree: For by that Law there are so many Degrees as there are Persons beside

beside the Common Stock; but by the Canon Law, so far as either of the Persons is distant from the Common Parent, so far he is distant from the other in the Equal Line. Sometimes that which is lawful hath been prohibited, lest men should run into that which is unlawful: This is a matter of Prudence only, not of what is lawful or not. Such Laws are Drains for Money. Gold will purchase Leaden Dispensations. And so it was when the Civil Law was Tuned to the Key of the Canon Law, and both to the Aire of the *Gothes* and *Vandals*.

Obj.

Second Cousins are forbidden to Marry, *Ergo*, first Cousins much more, though they be not expressly named.

SOL.

None eve: forbade second Cousins to Marry, but they that forbade first Cousins to Marry. It is

a

a Groundless Fancy, and Vulgar Error; *Isaac* Married his second Cousin. and that is more than can be said against it. And this is Answer enough for such a trifling Objection.

B

OF

O F

Consanguinity:

OR,

KINDRED by BLOOD.

The Degrees of Consanguinity, and their different Computation between the *Civilians* and *Canonists*, are better understood by the Inspection of a Pedigree, than by Writing or Speaking; yet *Justinian* gives good Directions, *Iust. l. 1. Tit. de Nuptiis*, and *lib. 3. Tit. 6. de Gradibus Cognitorum*.

1. Degree. The first Degree of Consanguinity is in the Right Line Ascending and Descending, where all Degrees of that Line are forbidden. So

So that upwards a Man may not Marry his Mother, Grandmother, or Great Grandmother, &c. And downwards, he may not Marry his Daughter, Granddaughter, no Great Grand-daughter, &c.

The Reason is, Because in all these Cases one of the Parties is a Parent, or a Child by Blood: That is, The Woman is either a Mother, or a Daughter to the Man.

This was *Lots Incest*; and *Rew-
bens Incest*, v. Gen. 19, 33. Gen.
25. 22. Gen. 38. 10. Lev. 18.7. &c.
Lev. 20. 11, 12, &c. Ez. 22. 13.
Am. 2. 6.

The second Degree of Consanguinity is in the Side Line equal, in which all Propinquity, or nearness by Blood is forbidden to the Second or Third Degree only.

Of Consanguinity.

The Reason is, Because Propinquity, or Nearness consisteth but in Two or Three Degrees, as he is my near Neighbour that dwelleth but two or three Houses from me. And the *Levitical Law* Reckons Propinquity or Nearness no further than the third Degree. The rest she accounts Remote.

So that in the second Degree of the Side-equal, or Collateral Line, (the *Civilians* compute in that Line no first Degree at all) a Man may not Marry his Sister, nor his Sisters Daughter, &c. for she is his near Kinswoman, either by the whole Blood, or by the half Blood.

The Reason is, Because in all these Cases the Parties are always Brother and Sister; that is, the Woman is always Sister to the Man, and the Man Brother to the Woman by Blood.

This was *Amoms* Incest with Instances.
Tamar, his Sister by the half Blood;
for they were both Children to
David by several Venters. 3. Degree.

The third Degree is in the Side-
unequal Line or Linage upwards
or downwards: In which up-
wards a Man may not Marry his
Aunt nor Great Aunt, &c. And
downwards a Man may not Mar-
ry his Neece, or his Neeces Daughter,
&c,

As when upwards I lie with
my Aunt, whether she be my Fa-
thers Sister or Mothers Sister by
Blood: Or downwards I lie with
my Neece whether she be my
Brothers Daughter or my Sisters Reason;
Daughter.

The Reason is, Because in all
these Cases the Woman is still
either Aunt or Neece to the Man.

The Computation of Degrees in the Right Line.

1. The first Degree in the Right Line is from me to my Father or Grandfather, and all my Parents upward, or from me to my Daughter or Grand-daughter, and all my Children downward.

2. The second Degree in the Side-Line Equal is, from me upward to my Father one Degree, and from my Father downward to his Daughter, which is my Sister, two Degrees.

Reason.

Now the Reason why in the Side-Line the Computation proceedeth not directly from me to my Sister ; but fetcheth a compass about upwards and downwards, and passeth through our Parents is, Because the Consanguinity between me and my Sister is

is not *Immediate*, *Proximus* and *Prime* in the first Degree, but *Mediate*, *Propinquous* and *Secundary*, through and by the means of two common Parents:

For no Blood is derived or passed from me to my Sister, nor from her to me; but Blood is derived or passed from our Parents to each of us, and in us their Blood is parted.

My Mother therefore, who derives her Blood to me immediately, must needs be more Consanguineous, or nearer of Kin to me than my Sister, who derives no Blood at all to me, but only takes part of the same Blood with me. And my Daughter, who derives her Blood immediately from me, must needs be more Consanguineous or nearer of Kin to me than my Sister, who derives no Blood at all from me.

Of Consanguinity.

My Mother therefore upwards, and my Daughter downwards are the Females of nearest Consanguinity or Kindred to me : And therefore they make the first Degree ; for that which in order is the nearest or next to me, must needs be the first from me : And Consequently my Sister being not so near to me in Consanguinity, Kindred or Blood, as is my Mother and Daughter, cannot be computed in the first Degree ; and therefore must either be in the second Degree, or in a Degree more remote, or else in no Degree at all.

Hence it is, that in many Accurate Pedigrees the Lines are drawn and visibly expressed in the right Line or Linage only, and they are drawn downwards only according to the Descent from the Parents to the Children.

Because

Because the course of the Blood which makes Consanguinity, passeth only by Descent downwards.

But sideward in the Side-Line or Linage, no Lines at all are visibly drawn and expressed; because the Blood hath no passage at all that way; for there was none at all, neither from the Brother to the Sister, nor from her to him.

So that they partake not of one another's Blood, but both partake of their Parents Blood, which descends in Common to them both, and in them is parted and divided into several Channels, making several descents; yet for Computation sake there are Lines conveyed sideward in the Side-Line or Linage, not Lines real and visible, but only imaginative and putative; such as Astronomers conceive in Heaven, and Geo-

Geographers on Earth, calling them Meridians or Parallels, which are no Realities visible or sensible, but only Imaginations or Fictions in Astronomy or Geography.

s. Degree. The third Degree sideward in the Side-Line Unequal is thus, for my Uncle or Aunt. From me to my Father or Mother upwards is one Degree, then from my Father and Mother to their Father and Mother, or my Grandfather and Grandmother is two Degrees, then downwards to the Son or Daughter of my Grandfather or Grandmother, which is sideward to my Father and Mother, which are their Brother and Sister, which are my Uncle and Aunt is Three Degrees.

And the Brother and Sister of my Father or Mother is my Uncle and Aunt.

And

And for my Nephew and Neece the Computation is thus; from me to my Father or Mother upwards is one Degree, from my Father and Mother, then downwards to their Son and Daughter, (which is sideward to me) which are my Brother and Sister, is two Degrees, and from my Brother and Sister downwards again to their Son and Daughter is Three Degrees.

And the Son or Daughter of my Brother or Sister is my Nephew or Neece.

Sideward in the Side-Line or Linage no more Degrees are forbidden for Marriage beyond the Third Degree, either by the Law of *Moses*, or by the Civil Law, or by the Law of our Church.

Because in these Lands the Degrees only of Propinquity or Nearness are forbidden; and Propinquity

quity or Nearness consisteth but in Three Degrees, determining in the Third.

And therefore Persons in the Fourth Degree sideward, and much more in the Fifth or Sixth Degree, &c. may lawfully Marry: Because such Persons are in no Degree of Propinquity, seeing Propinquity comprehendeth only but Three Degrees; and consequently first Cousins, or Cousin Germans, or Brothers and Sisters Children may lawfully Marry, and many times do so: And therefore a Man may Marry his Uncles Daughter, or his Aunts Daughter; for my Uncle or my Aunts Daughter is my Cousin German.

4 Degree. The Fourth Degree sideward between Brothers and Sisters Children, or Cousin Germans is thus: from me upward to my Father or Mother is one Degree, from

from my Father or Mother to their Father or Mother, or my Grandfather or Grandmother is Two Degrees: Then from my Grandfather or Grandmother, which are the common Stock downwards to their Son or Daughter, which sideward are my Father and Mother, Brother and Sister, and my Uncle and Aunt, is Three Degrees; & from my Uncle and Aunt downwards to their Son or Daughter, which are my Cousin Germans, is Four Degrees.

This Computation of Degrees is according to the Civil Law, whose Rule is this, *Tot sunt Gradus Cognationis, quot sunt Generationes, 1. So many Generations so many Degrees.*

The Computation of the Canon Law is, *Quoto Gradu unusquisq; eorum distat a communâ stipite,*

Stipite, eodem Gradu distant inter se, i. In what Degrees the Parties are distant from the Common Stock, in the same Degree they are distant between themselves.

So that Brothers and Sisters Children, that by the Computation of the Civil Law differ Four Degrees from each other, by the Canon Law they differ but Two Degrees from each other.

So that the Civil Law considereth Degrees, especially for Successions of Inheritances from Person to Person, numbering the Degrees according to single Persons, only by one Degree at once, ascending to the next or nearest Common Stock or Parent, and thence descending to the Person whose Degree is required. But the Cannon Law considereth rather the Degrees of Marriage made

made by the consent of Two Persons, and for that reason joyneth Two Persons together in the numbring of Degrees.

As to Cousin Germans therefore, (to conclude) though some Divines and some Lawyers here in *England* do scruple at the lawfullness of their Marriage ; yet they scruple it without alleadging any sound Reason, but relying only upon Tradition, and the long practice of the Canoniſts, who have forbidden thoſe Marriages for meer Lucre, to Gain Money for the Licencing of them, by Dispensations, which are denied to none, but are granted of course, for Money, to all that desire them. But from the beginning it was not ſo, neither ought it to be ſo ; because the Rule holds good, *Quod ab initio non valuit, illud trahi Temporis*

CONVA-

Of Consanguinity.

convalescere non potest: That which was invalid from the beginning, cannot be made valid by length of Time.

OF

O F
Affinity.

O R,

Alliance by Marriage.

Affinity is grounded upon Law and Marriage, as Consanguinity is grounded upon Blood and Birth: And therefore there is a near resemblance between them. And though in Affinity there be properly no Degrees, yet Degrees are Assigned to it, and are computed according to the Degrees of Consanguinity.

The first Degree of Affinity is ^{1. Degree.} in the Right Line Ascending and Descending, where all Degrees are forbidden.

C So

So that upwards I may not Marry my Fathers second Wife, and downwards I may not Marry my Sons Wife.

Reason.

The Reason is, Because in all these Cases the Party Married, is a Parent by Marriage to the Party marrying: That is, the Woman is either a Mother in Law, or a Daughter in Law to the Man. As in Consanguinity, the Woman was either a Mother in Nature, or a Daughter in Nature to the Man.

Instances.

Gen. 38.

18.

1 Cor. 5.1.

This was *Judas* his Incest with *Tamar* his Sons Wife, and this was the *Corinthians* Incest with his Fathers Wife.

2. Degree.

The second Degree of Affinity is in the Side or Collateral Line Equal.

So that in the second Degree sideward I may not Marry my Brothers Wife, or my Sister in Law;

Law, nor my Wives Sister, or my Sister in Law.

The Reason is, Because in all Reason; these Cases the Woman is still Sister in Law to the Man, or the Parties Married are Brothers and Sisters in Law, as in Consanguinity the Parties are Brothers and Sisters by Nature.

This was *Jacobs* Incest in Marrying with *Rachel* his Sister in Law; for she was own Sister to *Leah* his first Wife. This was *Herods* Incest, who Marryed with *Herodias* his Brother *Philip's* Wife. And this was *Henry* the 8th. his Case, who Marryed *Katharine* his Brother *Arthurs* Wife. v. Gen. 29. 30. Lev. 18. 9, 11, 16. Lev. 20. 17, 21. 2 Sam. 13. 10, 11. Math. 14. 3, 4.

The Third Degree of Affinity is. Degrees is in the Side-Line Unequal.

Of Affinity.

So that in the Third Degree upward I may not Marry my Uncles Wife, or my Aunt in Law, nor Downwards my Nephews Wife, or my Neice in Law.

Reason.

The Reason is, Because in all these Cases the Woman is still either Aunt or Neece in Law to the Man by Marriage, and so *vice versa*, or the Parties Married are Uncle or Aunt, or Nephew and Neece in Law, as in Consanguinity they are Uncles, Aunts, Nephews and Neeces in Nature.

Now Affinity ariseth to me Two ways; first by my own Kindred, i. Kinsmen or Kinswomen when they are Marryed, or by my Wifes Kinsmen or Kinswomen when I my self am Marryed.

By my own Kindred, as . . .

i. By the Wives of my Male Kindred: Therefore the Wives
of

of my Kinsmen by Consanguinity, are my Affines or Allies in the same Degree of Affinity, wherein my several Kinsmen and I stood by Consanguinity or Kindred.

So upwards my Fathers Second Wife, or my Stepmother, or Mother in Law, are my Affines or Ally in the first Degree of Affinity or Alliance, because my Father and I are in the first Degree of Consanguinity or Kindred, and downwards my Sons Wife, or my Daughter in Law is my Affines or Ally in the first Degree of Affinity or Hlliance, because my Son and I are in the first Degree of Consanguinity or Kindred: And sideward my Brothers Wife, or Sister in Law, is my Affines or Ally in the Second Degree; because my Brother and I are in the Second Degree of Consanguinity

Of Affinity:

or Kindred: And so farther side-
ward in the Third Degree, my
Uncles Wife, or my Aunt in Law
is my Affines or Ally in the Third
Degree of Affinity; because my
Uncle, and my Nephew, their Huf-
bands, are my Kinsmen in the
Third Degree of Consanguinity

2. In like manner *vice versa*, the
Husbands of my Kinswomen, *i. e.*
of my Female Kindred by Con-
sanguinity, are my Affines or Al-
lies in the same Degree of Affinity
wherein my several Kinswomen
and I stood by Consanguinity or
Kindred.

So upwards my Mothers Se-
cond Husband, or my Father in
Law is my Affines or Ally in the
first Degree of Affinity or Alliance,
because my Mother is my Kins-
woman in the first Degree of
Consanguinity or Kindred: And
downwards my Daughters Hus-
band

band, or my Son in Law is my Affines or Ally in the first Degree of Affinity, because my Daughter is my Kinswoman in the first Degree of Consanguinity: And sideward my Sisters Husband, or my Brother in Law, is my Affines or Ally in the second Degree of Affinity, because my Sister is my Kinswoman in the second Degree of Consanguinity; so likewise farther sideward in the Third Degree, my Aunts Husband, or my Uncle by Marriage is my Affines or Ally in the Third Degree of Affinity; and my Necces Husband, or my Nephew in Law, is my Affines or Ally in the Third Degree of Affinity, because correspondently my Aurt & my Necce are Kinswomen in the Third Degree of Consanguinity or Kindred.

2. By my Wives Kindred.

Besides the Affinity arising un-

Of Affinity.

to me by my own Kindred, i. My Kinsmen and my Kinswomen, there accrues unto me if I be Married a great Stock of Affinity by my Wife.

Yet a Man and his Wife are properly of no Kin at all, neither by Consanguinity, or Affinity in any Degree of Propinquity neither before Marriage nor after.

Not before Marriage, because their Consanguinity or Affinity in any Degree of Propinquity would be so just an Impediment against their Marriage, that thereupon they might not Marry at all, or if they did Marry, their Marriage would be accounted unlawful and Incestuous.

Nor after Marriage, because Consanguinity and Affinity lyeth necessarily between two distinct Persons, who make the distinct terms of those Relations.

But a Man and his Wife though
natu-

naturally and sensibly they are Two distinct Persons, yet Jurally and Legally in the Estimation of Law, they are no more two but one Person, or as the Scripture phraseth it. *They Two are no more* Mat. 19. 6. *Two, but one Flesh.*

Again, after Marriage a man is nearer to his Wife than to his Father and Mother; for he must leave his Father and Mother and cleave to his Wife: But a Mans Consanguinity with his Father and Mother is in the first Degree, and therefore there can be no Degree of Consanguinity with his Wife, because there can be no Degree before the first.

The Marriage therefore of Man and Wife effecteth neither Consanguinity nor Affinity, but an Unity, which is a Conjunction more Entire, more Perfect, more Eminent, or more transcendent than

Of Affinity.

to me by my own Kindred, i. My Kinsmen and my Kinswomen, there accrues unto me if I be Married a great Stock of Affinity by my Wife.

Yet a Man and his Wife are properly of no Kin at all, neither by Consanguinity, or Affinity in any Degree of Propinquity neither before Marriage nor after.

Not before Marriage, because their Consanguinity or Affinity in any Degree of Propinquity would be so just an Impediment against their Marriage, that thereupon they might not Marry at all, or if they did Marry, their Marriage would be accounted unlawful and Incestuous.

Nor after Marriage, because Consanguinity and Affinity lyeth necessarily between two distinct Persons, who make the distinct terms of those Relations.

But a Man and his Wife though

natu-

naturally and sensibly they are Two distinct Persons, yet Jurally and Legally in the Estimation of Law, they are no more two but one Person, or as the Scripture phraseth it. *They Two are no more* Mat. 19. 6. *Two, but one Flesh.*

Again, after Marriage a man is nearer to his Wife than to his Father and Mother; for he must leave his Father and Mother and cleave to his Wife: But a Mans Consanguinity with his Father and Mother is in the first Degree, and therefore there can be no Degree of Consanguinity with his Wife, because there can be no Degree before the first.

The Marriage therefore of Man and Wife effecteth neither Consanguinity nor Affinity, but an Unity, which is a Conjunction more Entire, more Perfect, more Eminent, or more transcendent than

than any Consanguinity or Affinity can possibly be.

And though this Union by Marriage be neither Consanguinity nor Affinity, yet without Marriage there is no lawful Consanguinity nor Affinity, but Bastardy.

For Marriage is the Ground and Cause of both those Relations, it is the Seed and Root from whence they arise, and it is the Terme or Point from whence their Degrees are measured.

And Consequently a Man and his Wife are neither *Affines* nor *Consanguini*, but *Conjuges*. That is, neither of Alliance or Blood, but Conjoyned in one Person in Law, and Yoke-Fellows in one Sacred Band of Wedlock.

And though in some passages of the Civil Law they be called *Affines*, yet that Appellation must be construed for a Metaphor and an Impropriety. Now

Now the Affinity that ariseth unto me by my Wife, is easily computed thus.

My Wives *Consanguinei* or Cousins are Affines or Allies to me, and are in the same Degree of Affinity to me, as they stand in Degree of Consanguinity to her.

And therefore my Wives own Father and Mother are my Father in Law and Mother in Law, which to me is Affinity in the first Degree of Consanguinity.

So my Wives own Brothers and Sisters are my Brothers in Law and Sisters in Law, which is Affinity in the Second Degree.

So my Wives own Uncles and Aunts are my Uncles in Law and Aunts in Law, which is Affinity in the Third Degree.

And *vice versa* my *Consanguinei* or Cousins, are Affines or Allies to my Wife in the same Degrees

Of Affinity.

grees of Affinity as they are to me of Consanguinity.

And therefore my own Father and Mother are my VVives Father in Law and Mother in Law, which is Affinity in the first Degree.

So my own Brothers and Sisters, are Brothers in Law and Sisters in Law to my VVife, which is Affinity in the Second Degree.

And so my own Uncles and Aunts are Uncles in Law and Aunts in Law to my VVife, which is Affinity in the Third Degree.

In Affinity therefore as to the Point of Marriage; so many Degrees are forbidden, as there are restrained in Consanguinity by Blood.

As therefore in Consanguinity, I may not Marry any of my Kindred or Cousins in the First, Second or Third Degree, so in Affinity I may not Marry any of my

my Affines or Allies in the First, Second, or Third Degree. Whether that Affinity arise to me from my own Kindred, or from my VVives Kindred.

But it must be observed, That though Consanguinity by the means of Marriage breed Affinity, yet Affinity so bred, begets no farther Affinity.

And therefore though my VVives Kindred are Cousins or Allies to me, yet they are not Allies to my Kindred or Cousins.

So that though my VVives Father & Mother are Allies to me, yet they are not Allies to my own Father & Mother, nor to my own Brothers & Sisters, nor to my own Sons and Daughters if I had any by my former VVife.

So likewise my VVives own Brothers and Sisters, though they be Allied to me, yet they are not Allied

Of Affinity.

Allied to my own Father and Mother, nor to my own Brothers and Sisters, nor to my own Sons and Daughters, if I had any by my former VVife.

So again my VVives own Children, if she had any by a former Husband, though they be Allies to me, yet they are not Allies to my own Father or Mother, nor to my own Brothers and Sisters, nor to my own Sons and Daughters, if I had any by a former VVife.

Hereupon as to the Point of Marriage it will follow, That respectively to me and my VVife Three sorts of Marriages may be lawful.

First upward, That my own Father and my VVives Mother, their respective Conjuges being dead, may marry.

Reason: Because though my own Father

ther be Allied to my VVife, yet he is no way Allyed to her own Mother: And her own Mother though she be Allied to me, yet she is no way Allied to my own Father.

Secondly it will follow side-
ward, That my own Brother,
and my VVives own Sister may
marry.

Because though my VVives Reason:
own Sister be Allied to me, yet
she is no way Allied to my own
Brother.

So likewise my own Sister and
my VVives own Brother may
marry for the same Reason.

Thirdly it will follow down-
ward, That my own Son by a
former VVife, and my VVives
own Daughter by a former Hus-
band may marry.

Because my VVives own Reason:
Daughter by another Husband,
though

Of Affinity.

though she be Allied to me, yet
she is not Allied to my own Son
by another VVife.

And for the same Reason my
Daughter by a former VVife
may marry my VVives own Son
by a former Husband.

In several Instances the Practice
of these Three kinds of marria-
ges hath been, and is known in
the VVorld.

First upward between the Pa-
rents of a man and his VVife.

Secondly sideward, between
the Brothers and Sisters of a man
and his VVife.

Thirdly downwards between
the Children of a man and his
Wife, which they had by their
former Conjuges.

The Church of *England* in Case
of marriage forbids no more De-
grees of Consanguinity or Affini-
ty than are forbidden in the Civil
Law.

Law. Yet she numbers and computes the Degrees somewhat otherwise, following therein the Account of the Canon Law.

For she accounts Brothers and Sisters to be in the first Degree of the side Line; whereas the Civil Law accounts them in the second Degree of the side Line, and makes no first Degree in that Line at all.

But the matter comes all to one pass, as some Players at *Gleek*, reckon their Games differently, and yet accord well enough in the sum of the account.

For if we consider the side Line alone by its self, as there are several Persons in it, then some of those Persons must needs make the first Degree of the side Line in respect of the Persons following therein. But if we

D look

Of Affinity.

look upon the Standard of the Pedigree, or the Person whose Consanguinity is required, and from whom the Degrees thereof are measured and numbered upward, downward, and sideward, Then the Persons of the first Degree in the side Line, must needs make the second Degree of Consanguinity in respect of the Standard, or Person supposed whose Consanguinity is required, and from whom the Degrees are to be measured, according to the course whereby the Blood is derived, which doth constitute Consanguinity, as before hath been intimated.

The Levitical Laws for Marriage, do now bind Us of the Church of *England*; Yet this Truth is to be understood with some Caution.

For

For albeit these Laws do bind us, yet they bind us not by Divine Authority, because their Obligation by Divine Authority ceased, expired, and dyed at the death of Christ.

And thereupon all Christian Churches were left to their several Liberties to follow such Rules, Orders, Measures, and Degrees, as by right Reason, and Christian Prudence should be established:

For the determination whereof the Church of *England* conceiv-ed it the most prudent course to make the Levitical Laws her President and Pattern; and at last assumed them, and adopted them into her own Canons and Statutes; reviving unto them an Obligation, not of Divine Au-thority, as once they had from God, but of Humane Authori-ty,

ty, by the Secular and Ecclesiastical Power of our Princes and Bishops after the Reformation.

Thus these very Levitical Laws for Marriage, whose Obligation by Divine Authority was long since expired, were afterwards revived unto a new Obligation upon us by Humane Authority.

In like manner divers of the Civil Laws do now oblige us here in *England*, yet not by their original Constitution, nor by the Imperial Authority, either of *Justinian*, or any other Emperor, but by the Authority of our own State, which hath assumed and confirmed them into Laws as Obligatory here in *England* as they were in the Roman Empire.

The END.

A
T R E A T I S E
O F
M A R R I A G E,
W I T H
A Defence of the 32th Article of
Religion of the Church of England ;
V I Z.

Bishops, Priests and Deacons are not commanded by God's Law, either to Vow the state of single life, or to abstain from Marriage ; therefore it is lawful for them, as for all other men, to marry at their own discretion, as they shall judge the same to serve better to godliness.

Heb. 13.6. *Marriage is honorable in all, and the bed undefiled: But Whoremongers and Adulterers God will judge.*
1 Tim. 3.2. *A Bishop then must be blameless, the husband of one wife.*

Ἐπειδὴ τὸ πόνον ὁ γάμος, ἀστι μετὰ αὐτῷ καὶ
οὐτὶ τὸ οἶκον θρέψειν δύναται αὐτοῖς.
Theophylact. on Tit.1.6.

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